INDEX

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Statute and rule involved	3
Statement	3
Specification of errors to be urged	12
Reasons for granting the writ	13
Conclusion	25
Appendix A	26
Appendix B	29

CITATIONS

CASES:

Cherry Cotton Mills, Inc. v. *United States*, 327 U. S. 536	24
Dollar v. *Land*, 154 F. 2d 307	10
Federal Crop Insurance Corp. v. *Merrill*, 332 U. S. 380	24
French v. *Shoemaker*, 14 Wall. 314	22
Handley v. *Stutz*, 139 U. S. 417	22
Hodgson v. *Dexter*, 1 Cr. 345	24
Hoe v. *Wilson*, 9 Wall. 501	15
Inland Waterways Corp. v. *Young*, 309 U. S. 517	24
Kimbrough-Veasey Company, In re, 292 Fed. 757	22
Land v. *Dollar*, 330 U. S. 731	10, 14, 15
Larson v. *Domestic and Foreign Corp.*, 337 U. S. 682	11, 13, 14, 15
Matson-Dollar Agreements, Matter of, 2 U. S. M. C. 387	23
McIlhenny v. *Blum*, 68 Tex. 197, 4 S. W. 367	22
Messenger v. *Anderson*, 225 U. S. 436	15
North Dakota-Montana Wheat Growers Ass'n v. *United States*, 66 F. 2d 573	24
Orvis v. *Higgins*, 180 F. 2d 537, certiorari denied, October 9, 1950	17, 19
Rosenberg v. *Garfinkel*, 294 Mass. 196, 200 N. E. 907	22
Stanley v. *Schwalby*, 162 U. S. 255	15
United States v. *Gypsum Co.*, 333 U. S. 364	17, 18
United States v. *Yellow Cab Co.*, 338 U. S. 338	18
United States v. *Remund*, 330 U. S. 539	23, 24
Wilson, In re, 23 F. Supp. 236	24

STATUTES:

Bankruptcy Act approved June 23, 1938, 52 Stat. 938, 11 U.S.C. 1101-3	6
Merchant Marine Act of 1936, as amended, 49 Stat. 1985, 2001, 46 U.S.C. 1101 *et seq.*:	
Section 201	23
Section 202	24

Page

Section 206 25
Section 207 ..... 16, 26
Section 601(a) 16, 26
Section 603(a) 16, 27

California Probate Code:
Section 578 21
Section 773 21

MISCELLANEOUS:

F.R.C.P. Rule 52(a) 17, 19, 20, 25, 27
Letter from the Secretary of Commerce, dated September 18, 1950, to the Attorney General 29
2 Moore's Fed. Pr. (1949 Cum. Supp.) p. 2242 15
4 Pomeroy, *Equity Jurisprudence* (5th ed., 1941), §§ 1193, 1195 21
Reorganization Plan No. 21 of 1950, 15 F. R. 3178 12
Restatement of the Law Security, comment on Section 135, p. 367 22
United States Maritime Commission, *Report to Congress for the period ended October 25, 1938*, p. 11 9
United States Maritime Commission, *Report to Congress for the period ended October 25, 1939*, p. 10 9

In the Supreme Court of the United States

OCTOBER TERM, 1950

NO.

EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND S. MCKEOGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MEAD, AND J. K. CARSON, JR., Former Members of the United States Maritime Commission, *Petitioners*

v.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of Emory S. Land and other former members of the United States Maritime Commission, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of

Columbia Circuit entered in the above-entitled case on July 17, 1950.

OPINIONS BELOW

The opinion of the district court (R. 258-275) is reported at 82 F. Supp. 919. The opinion of the Court of Appeals (R. 2144-2158) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 17, 1950 (R. 2159). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

Respondents brought suit to enjoin members of the Maritime Commission from selling or otherwise disposing of the common stock of an operating steamship corporation (Dollar of Delaware) and to compel them to turn over that stock to respondents. The district court, sitting without a jury, found that the Maritime Commission had statutory authority to acquire and had acquired absolute title to the stock under a contract between it and respondents. The resultant judgment against the respondents was reversed by the court of appeals because it found that the contract was one of pledge rather than sale. The questions presented are:

1. Whether this suit, contesting the title of the United States to property in its possession, is an unconsented suit against the United States since it

has not been shown, and the court below did not find, that the property is being withheld by action in excess of valid statutory authority.

2. Whether, if the district court had jurisdiction to adjudicate the question for any purpose, its finding of fact, based on mixed documentary and oral testimony, that the stock belonged to the United States and not to respondents, could be set aside by the appellate court under Rule 52(a) of the Federal Rules of Civil Procedure though the finding is not held to be "clearly erroneous" by the appellate court, and, if so, whether the court of appeals correctly found the contrary.[1]

STATUTE AND RULE INVOLVED

The relevant provisions of the Merchant Marine Act of 1936, as amended, 49 Stat. 1985, 46 U. S. C. 1101, *et seq.*, and the provisions of F. R. C. P. 52(a) are set forth in Appendix A, *infra*, pp. 26-28.

STATEMENT

In 1938, certificates representing 92 per cent of the common stock of an operating steamship corporation, Dollar Steamship Lines, Inc., Ltd. (Dol-

[1] Should certiorari be granted, the Government wishes to reserve the right to present for this Court's consideration the following additional question: Whether, assuming (a) that the Maritime Commission had no statutory authority to acquire ownership of the stock, and (b) that the transfer was in fact absolute, not a pledge, the respondents are estopped from asserting the invalidity of the agreement because of their receipt and enjoyment of the benefits of the agreement.

lar of Delaware),[2] were transferred by the then stockholders, endorsed in blank, to the United States Maritime Commission pursuant to an "Adjustment Agreement" under which Dollar of Delaware obtained from the Maritime Commission a $2,000,000 loan for repairing its vessels and a five-year operating differential subsidy, and obtained from the Reconstruction Finance Corporation a $2,500,000 loan for operating capital. Under the Adjustment Agreement, R. Stanley Dollar and Dollar Steamship Line (Dollar of California), the transferors of the largest blocks of stock, were released from their respective liabilities of $1,781,250 and $3,575,193 as sureties on obligations of Dollar of Delaware to the Government.

Prior to execution of the Adjustment Agreement on August 15, 1938, the financial position of Dollar of Delaware, which operated passenger and freight vessels on trans-Pacific and around-the-world routes, was so precarious that it was on the verge of bankruptcy (R. 260, 1065). The common stock of that company, which was owned almost entirely by R. Stanley Dollar, Dollar of California and other interrelated Dollar corporations, and a few business associates of Mr. Dollar, had no market value and Dollar of Delaware was in default on obligations to the Government totaling approximately $7,500,000. The Commission held as

---

[2] Its name was subsequently changed to American President Lines, Ltd.

collateral for this debt mortgages on several ships owned by Dollar of Delaware.[3] In addition, R. Stanley Dollar and Dollar of California were sureties on these obligations in the amounts of $1,781,250 (R. 168) and $3,575,193, respectively (R. 64-65).

For more than a year, the Dollar interests had been negotiating with the Maritime Commission in an endeavor to avoid bankruptcy of Dollar of Delaware by reorganizing its financial affairs so that it might receive necessary financing by way of government loans and qualify for an operating differential subsidy under the Merchant Marine Act of 1936, Appendix A, *infra*, p. 27. Between April and June 1938, the Maritime Commission was insisting that R. Stanley Dollar and Dollar of California, as well as associated corporations and H. M. Lorber, a minor stockholder of Dollar of Delaware, enter into guarantees of the *entire* $7,500,000 debt of Dollar of Delaware, to be secured by pledges of their stockholdings in the various Dollar corporations, including the common stock of Dollar of Delaware, as a condition to the furnishing of government financing to Dollar of Delaware by way of working capital and ship repair loans and an operating differential subsidy (R. 103-104, 107-111, 157-176). The Commission was reluctant, in ex-

[3] This debt was incurred for the purchase of twelve ships and the construction of two others by Dollar of Delaware and its predecessor during the years 1923 to 1929 (R. 260).

tending financial aid, to create common stock equity values in favor of persons who were unwilling themselves to assume any financial obligations whatever (R. 1639). Dollar of California, as well as the other Dollar interests, refused to give the requested guarantees and pledges but made the Commission an alternate proposal under which Dollar of California would "surrender" to the Commission its common stock holdings in Dollar of Delaware on condition that it be released from its suretyship liability to the Government (R. 243-246).[4] Further negotiations, culminating in the Adjustment Agreement, took place on the basis of the "surrender" proposal. In these negotiations, the proposed transfer of stock to the Commission was never referred to, either orally or in writing, as a pledge (R. 1801).[5]

---

[4] Dollar of California considered that an "ominous situation", making valueless the common stock of Dollar of Delaware, was created by the passage by Congress on June 13, 1938, of the amendment to the Bankruptcy Act permitting the Maritime Commission to operate vessels of bankrupt shipping corporations on which the United States holds mortgages and denying the courts power to issue any injunction affecting the United States as a preferred ship mortgagee (Act approved June 23, 1938, 52 Stat. 938, 11 U. S. C. 1101-1103) (R. 250).

[5] At a Commission meeting on July 12, 1938, the Executive Director submitted a detailed memorandum of the plan under negotiation and pointed out that the transfer of the stock entailed "ownership" of the "controlling interest" in Dollar of Delaware and that the Commission could in a short time dispose of such ownership to that company's long-time employees. The Commission formally adopted this plan. (R. 1672-1689.)

The Adjustment Agreement did not describe the stock transfer as a pledge, although by contrast that agreement, in describing a pre-existing pledge to the Anglo Bank of part of the stock, used the word "pledge" several times (R. 35-36). With reference to the stock subject to the bank pledge, the agreement provided that "all rights and interests of the respective pledgors" (R. Stanley Dollar and J. Harold Dollar Estate) would be transferred to the Commission subject to existing pledges (R. 36). In accordance with a provision of the agreement, R. Stanley Dollar and the estate of J. Harold Dollar executed assignment and option agreements with respect to the stock subject to the bank's pledge which used the words "hereby sells, assigns, transfers, and sets over unto the Commission, subject to said existing pledge, all his right, title, and interest in and to" the stock. With reference to the stock not subject to the pre-existing pledge to the Anglo Bank, the agreement provided for transfer to the Commission "free and clear of all liens and encumbrances" (R. 35). All parties agree that no distinction is to be made as to the nature of the transfer of the stock subject to the bank pledge and the other stock not so subject.

On the day the Adjustment Agreement was executed, but prior to the actual transfer of the stock, the Maritime Commission issued a press release stating that the agreement would transfer to the Commission "absolute title" to the stock. Mr.

Dollar can reasonably be presumed to have noticed this release, and although he was free to terminate the entire agreement, he, with the other stockholders, two months later delivered the certificates, endorsed in blank, to the Commission (R. 352-359). The transferors retained their preferred stock holdings in Dollar of Delaware (R. 1715-1716).

Mr. Dollar and Mr. Lorber, in their respective 1938 tax returns, wrote off their ownership of the common stock as a capital loss, on the ground that they had transferred "all right, title and interest in and to" the stock (R. 1180-1187; 1760-1763, 1765-1769). On September 12, 1938, executors of the estate of J. Harold Dollar, represented by counsel who participated in the transfer negotiations, secured an order from the California probate court authorizing the transfer "of all right, title and interest" to the stock, to consummate the agreement (R. 1476-1479). Prior to the Adjustment Agreement, Dollar of California carried as an asset on its balance sheet the stock it subsequently transferred to the Commission. But in its balance sheet as of December 31, 1938, this stock was entirely omitted. In a report approved by the stockholders of Dollar of California, the accountant who prepared this balance sheet stated that the company's investment in this stock had been charged to income for 1938 upon the release to the Commission of the shares "previously owned" (R. 1511-1516, 1521-1522).

The Maritime Commission, in its annual reports to Congress for 1938 and 1939, made pursuant to Section 208, 46 U. S. C. 1118, referred to the fact that it had acquired this stock and was the majority stockholder in Dollar of Delaware (United States Maritime Commission, *Report to Congress for the period ended October 25, 1938*, p. 11; United States Maritime Commission, *Report to Congress for the period ended October 25, 1939*, p. 10):

> On August 15, 1938, an agreement for reorganization was approved whereby the Commission acquired about 90 percent of the outstanding common stock of the Dollar Line, in consideration for releasing R. Stanley Dollar and the Dollar Steamship Co. of California from their liabilities as endorsers or comakers on the ship mortgage notes held by the Commission.
>
> This adjustment plan was consummated in October 1938 and the Commission as majority stockholder obtained complete control in the selection of the management. * * *

During the war years, Dollar of Delaware, having received the benefit of the financing made possible by the transfer agreement, greatly improved its financial position. It paid off its entire debt to the Government by October, 1943 (R. 66), and the stock transferred to the Commission became of great value. In 1945, the Maritime Commission made a public offer to sell this stock at auction

and received a bid of more than $8,000,000 (R. 29-30, 68). In July 1945, respondents for the first time asserted that they had merely pledged the stock (R. 97), and upon the Commission's refusal to return it to them, instituted this action to prevent the sale of the stock to others and to compel the Commission to return the stock to them.

The original suit was filed in the District Court for the District of Columbia on November 6, 1945 (see Transcript of Record, *Land* v. *Dollar*, 330 U. S. 731, October Term, 1946, No. 207, p. 1). It was dismissed by the district court *sua sponte* on the ground that the pleadings on their face showed that the case was an unconsented suit against the United States. That decision was reversed by the Court of Appeals, *Dollar* v. *Land*, 154 F. 2d 307. On April 7, 1947, this Court held (330 U. S. at 739) that the "District Court has jurisdiction to determine its jurisdiction by proceeding to a decision on the merits," stating that (330 U. S. at 735-736):

> The allegations of the complaint, if proved, would establish that petitioners are unlawfully withholding respondents' property under the claim that it belongs to the United States. That conclusion would follow if either of respondents' contentions were established: (1) that the Commission had no authority to purchase the shares or acquire them outright; or (2) that, even though such authority existed, the 1938 contract resulted not in an outright transfer but in a pledge of the shares.

The case was returned to the district court for further proceedings in accordance with this holding. The respondents amended their complaint to allege in the words of the opinion that the Commission had no authority to acquire absolute ownership of the stock and that the transfer was in fact a pledge (R. 11-12). Petitioners answered, alleging that their actions were fully authorized (R. 92), that the agreement was an outright transfer (R. 89), and that respondents were estopped from asserting the invalidity of the agreement (R. 101).

On December 2, 1948, after a lengthy trial, the district court, sitting without a jury, held that the Commission was authorized to take absolute title to the stock and found that the contract was one of sale rather than of pledge (R. 258-275, 82 F. Supp. 919). On June 27, 1949, this Court handed down its decision in *Larson* v. *Domestic and Foreign Corp.*, 337 U. S. 682, holding that a district court has no jurisdiction over a suit to recover property in the possession of the United States unless the property is being wrongfully withheld by officers acting in excess of their statutory authority or under an invalid statute. The appeal in the case at bar was argued on April 19, 1950, and decided on July 17, 1950 (R. 2144).

In its decision, the court below passed over the question whether the Commission had statutory authority to acquire absolute ownership of the stock of an operating steamship corporation (R.

2147) and proceeded to consider whether the transfer was absolute or simply a pledge. It disregarded the findings of fact of the district court on the ground that "the findings of the trial judge rested entirely upon documentary evidence or undisputed basic facts" (R. 2146). On its own view of the evidence, which it said pointed both ways, the court below found that the transfer was a pledge. It leaned "principally" upon two criteria for assessing the legal significance of the facts, (a) that where a debt is not discharged and the grantor is still left owing the money, a transfer of property by the grantor to the creditor will be deemed a pledge rather than an absolute sale (R. 2152), and (b) the stock was held by the Commission in its own name rather than in the name of the United States[6] (R. 2154). The court accordingly reversed the district court and directed the entry of a decree in conformity with its opinion (R.).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In failing to hold this is a suit against the United States to which the United States has not consented.

---

[6] The stock certificates are actually now in the custody of the Secretary of Commerce (see letter, Appendix B, *infra*, p. 29), pursuant to Reorganization Plan No. 21 of 1950 (15 F. R. 3178) transferring to that official the functions of the former Maritime Commission. A motion to substitute the Secretary of Commerce as petitioner in this case is being filed concurrently with this petition.

2. In passing over the question whether the Maritime Commission was authorized to acquire outright ownership of the stock of an operating steamship corporation.

3. In failing to decide that the Maritime Commission was authorized to acquire outright ownership of the stock of an operating steamship corporation.

4. In failing to apply Rule 52(a), Federal Rules of Civil Procedure, to the findings of fact of the district court.

5. In setting aside the findings of fact of the district court that the transfer of the stock was a sale, not a pledge.

6. In directing the entry of a decree favorable to respondents.

REASONS FOR GRANTING THE WRIT

1. In *Larson* v. *Domestic and Foreign Corporation*, 337 U. S. 682, this Court held that the "only" "types" of case "in which a restraint may be obtained against the conduct of Government officials" are (1) those in which the officer's powers are limited by statute, and his actions complained of go beyond those limitations, or (2) those in which "the statute or order conferring power upon the officer to take action in the sovereign's name is claimed to be unconstitutional," 337 U. S. 689-690. In this case, the court below explicitly refused to decide whether the power to acquire outright

ownership of the stock in question is within the statutory grant of authority to the Maritime Commission (R. 2147). Indeed, it noted that the Commission's claim to such power "has strong basis" (R. 2147). Nevertheless, the court below allowed this suit to proceed, though it, like *Larson*, is one in which the claim is that petitioners, as government officers, wrongfully withheld property belonging to the respondents, private claimants. As such, and in the absence of a finding of lack of valid statutory authority, this, like *Larson*, is an unconsented suit against the United States.

In reaching a conclusion so strikingly in conflict with the ruling of this Court in the *Larson* case, the court below relied on this Court's earlier decision at an earlier stage of this very litigation. *Land* v. *Dollar*, 330 U. S. 731. It read this Court's opinion in that case as holding that this would not be a suit against the United States if the transaction were a pledge and not an outright transfer of title. The Government does not contend that there is no warrant for such a reading of the first *Land* v. *Dollar* opinion. But it does insist that the subsequent opinion of this Court in the *Larson* case, concurred in by the author of the opinion in *Land* v. *Dollar*, puts it beyond doubt that the Court of Appeals' reading of the governing decisions of this Court is erroneous. For, in *Larson*, the majority of the Court, rejecting dissenting views specifically raising doubts on this very point, described its

holding in *Land* v. *Dollar* as permitting the suit to continue only because the "complaint * * * alleged that the members of the Commission 'acted in excess of their authority as public officers.'" 337 U. S. at 702, note 26; see also 337 U. S. at 726.

If the *Larson* decision leaves any doubt that the court below erred in this case, that doubt can be resolved by this Court alone. And, if there be no doubt that the court below erred, it is of the utmost importance that this error be corrected in this very case.[7] For, the importance of the decision below can hardly be over-estimated. The ruling on suits against the United States unsettles difficult and important legal problems clearly resolved by this Court's *Larson* decision. Its effect in this respect is particularly harmful since, unless reversed, the decision below controls the district courts in the District of Columbia, where most of the suits to

---

[7] The doctrine of "law of the case" is not here relevant since the question is not the effect to be given this Court's first *Land* v. *Dollar* decision but rather the meaning of that decision. But, even if relevant, the doctrine certainly imposes no limitation on this Court's power to reconsider. *Messenger* v. *Anderson*, 225 U. S. 436, 444.

It is also immaterial that petitioners failed to raise the jurisdictional point upon the remand of the case to the district court and prior to the *Larson* case. The objection that a suit is an unconsented suit against the sovereign cannot be waived, except by Congress, *Stanley* v. *Schwalby*, 162 U. S. 255, 270, and can be noted by the court, *sua sponte*, at any time. Cf. *Hoe* v. *Wilson*, 9 Wall. 501, and 2 Moore's Fed. Pr. (1949 Cum. Supp.) p. 2242.

restrain or compel acts of government officials are brought.

The situation is one peculiarly and especially demanding of consideration by this Court. Apart from the basic issue of which we have already spoken, it is not to be forgotten that this Court has already determined that *this case* is worthy of the Court's consideration. It involves now, as it did on the first review, a claim by the Government to ownership of property worth several million dollars, carrying with it control over a major steamship company engaged in the now even more vital trans-Pacific trade.

Though the Court below erroneously failed to pass on the question, the statutory authority of the Commission to acquire such stock is in dispute here. The Government believes that Section 207 of the Merchant Marine Act of 1936, as amended, 46 U. S. C. 1117, Appendix A, *infra*, p. 26, affords ample basis for this authority either (1) as a contract deemed necessary by the Commission to protect collateral for an indebtedness—in this case, ship mortgages on vessels owned by Dollar of Delaware, securing a debt due from Dollar of Delaware to the Commission; or (2) as a contract deemed necessary by the Commission in carrying out its authorized activities—in this case, the granting of an operating differential-subsidy to a qualified applicant on reasonable terms pursuant to sections 601 (a) and 603 (a) of the Act, 46 U. S. C. 1171(a), 1173(a), Appendix A, *infra*, pp. 26-27; or (3) as

a readily implied power of the Commission, having the powers of a private corporation, to compromise debts due to the Government.[8]

The case involves, additionally, an important problem not presented on the first appeal, to which we now turn.

2. (a) The effect of the judgment below is to read out of Rule 52 (a) of the Federal Rules of Civil Procedure a basic guide to appellate review in the federal judicial system. That Rule provides, in pertinent part, that "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of witnesses." Appendix A, *infra*, pp. 27-28.

The court below, in purported reliance on *Orvis* v. *Higgins*, 180 F. 2d 537 (C. A. 2), certiorari denied October 9, 1950, which in turn relied on the decision of this Court in *United States* v. *Gypsum Co.*, 333 U. S. 364, 394, ruled that because "the findings of the trial judge rested entirely upon documentary evidence or undisputed basic facts" (R. 2146), it could ignore the trial judge's finding. In the first place, the record in this case shows that the evidence was not solely documentary or undis-

[8] It was this last ground which the court below felt offered a "strong basis" for the Commission's authority (R. 2146), though it doubted that the second ground offered any support (R. 2156). The district court did not pass on this second ground, but held that the first and third provided clear authorization (R. 263-267).

puted, but that on the question of the intent of the parties to the transaction, both parties offered witnesses' testimony—six for respondents and seven for petitioners (R. x, xvi).[9]

But, passing that, the more serious mischief worked by the court below is that it derives from the alleged fact that there was no need, here, to give "due regard * * * to the opportunity of the trial court to judge of the credibility of the witnesses," the unwarranted conclusion that findings of fact may be set aside though not "clearly erroneous." Thus, not once in its opinion does the court below express a "definite and firm conviction that a mistake" had been committed by the trial court. *United States* v. *Gypsum Co.*, 333 U. S. 364, 394-396. Not once is the appellation "clearly erroneous" affixed to the trial court's findings.

On the contrary, the court below noted (R. 2148) that the answer to the factual problem presented "depends upon the comparative evaluation of various indices, some pointing one way and some the other." It arrived at its opinion that the transfer of the shares was a pledge only "upon balancing the conflicting considerations" (R. 2152). But where a question of balance is involved, where the evidence supports "a conclusion either way," "a choice between two permissible views of the weight of the evidence is not 'clearly erroneous' ". *United States* v. *Yellow Cab Co.*, 338 U. S. 338, 342.

[9] This excludes the testimony of Land, Woodward and Page which was excluded by the district court.

Nothing in this Court's *Gypsum* opinion or in the Second Circuit's *Orvis* v. *Higgins*, *supra*, is to the contrary. It is one thing to say that the appellate court, where the evidence is documentary or the basic facts undisputed and there is no question of credibility, is as well equipped as the trial court to judge of the true facts, *e.g.*, *Orvis* v. *Higgins*, 180 F. 2d 537, 539 (C. A. 2), *supra*. It is quite another for the appellate court, as here, to assume that that ability to judge permits it entirely to ignore the judgment of the trial court, and if the evidence, oral or documentary, permits of two reasonable inferences, to set aside the choice made by the district court. For so to hold is to bring to naught that part of Rule 52(a) which provides that "findings of fact shall not be set aside unless clearly erroneous." *Orvis* v. *Higgins*, *supra*, upon which prime reliance is placed by the court below, did no such thing. The court there stated that "the undisputed facts are such that we have a 'definite and firm conviction' that the trial judge was mistaken * * * We therefore hold [his] finding 'clearly erroneous' ". 180 F. 2d at 540. In the *Gypsum* case, this Court said that Rule 52(a) was applicable where "the inferences are drawn from documents or undisputed facts" (333 U. S. at 394).

The scope of review outlined by Rule 52(a) has two facets. The rule counsels due regard for the trial judge's opportunity to judge of the credibility of witnesses. But beyond that, it imposes a wise

guide to efficient judicial administration by requiring that due regard also be given to the fact that the case has been once judged and should not be treated on appeal as if it had had no prior consideration. By ignoring the "clearly erroneous" requirement of Rule 52(a), the court below has committed an egregious error which should be corrected by this Court.

(b) The finding of the district court, that the transfer of the stock was absolute, is not clearly erroneous, and the contrary finding of the court of appeals was reached in error. There is, as even a reading of the opinion below confirms (R. 2148-2151), ample evidence to support the district court's finding that the Adjustment Agreement transferred complete ownership of the stock to the Commission. The background of the agreement supports this reading of the terms of the agreement; the language of the agreement is much closer to an outright transfer than to a conditional pledge; the transferors were experienced business men, advised by able counsel, who knew the difference between a pledge and a sale;[10] the term "pledge" was not used to refer to the transfer to the Commission although it was used to describe existing liens on some of the stock. And, as the district court said, conclusive effect must be given

[10] The district court so found (R. 272), despite Mr. Dollar's testimony that he did not know the difference between a transfer of ownership and a pledge (R. 1177).

to the formal statements of the transferors, R. Stanley Dollar, Lorber, and the executors of estate of J. Harold Dollar,[11] made subsequent to the transfer, that they had given up all their interests in the stock (R. 272).

The reasons given by the court below for disregarding the weight of this evidence are themselves plainly erroneous. The court of appeals relied upon the equitable principle stated in 4 Pomeroy, *Equity Jurisprudence* (5th ed., 1941), § 1195, that in construing a conveyance of land accompanied by an agreement by the grantee to reconvey upon payment of a stated sum, if there is an indebtedness between the parties and this debt is not discharged by the conveyance of property but the grantor is regarded as still bound to pay it, then the transaction amounts to a mortgage and not a sale and contract of repurchase, whatever language the parties may have used.[12] Such a transaction bears no resemblance to the Adjustment Agreement, but in any event the Court of Appeals failed to appre-

---

[11] The court of appeals discounted this admission (R. 2155) because it mistakenly thought the transfer was authorized under Section 773 of the California Probate Code, whereas it was authorized under Section 578 of that code, which does not require any cash payment (R. 1469).

[12] The court of appeals also cited (R. 2153, n. 7) 4 Pomeroy, § 1193, which deals with the invalidity of efforts to cut off the equity of redemption. That rule had no conceivable application here, since the Government debt was secured by ship mortgages (*supra*, pp. 4-5), and the Adjustment Agreement did not affect any equity of redemption in the ships.

ciate that here the grantors (the transferors of the stock) did *not* remain bound to pay the debt. On the contrary, they were expressly discharged from all liability (*supra*, p. 4). The only party remaining liable on the debt to the Government was Dollar of Delaware, which did not transfer any property.

The Court of Appeals held, without any citation of authority, that where a creditor receives property from a surety in consideration for releasing the surety, but without affecting the obligation of the principal debtor, the creditor holds such property as a pledgee (R. 2157). In truth, whether the creditor holds such property as a pledgee or as outright owner depends entirely upon the intention of the parties, and there is not even any presumption in equity that such a transaction results in a pledge rather than an outright transfer. See *In re Kimbrough-Veasey Company*, 292 Fed. 757 (N. D. Ga.); *McIlhenny* v. *Blum*, 68 Tex. 197, 4 S. W. 367. The release of the sureties without crediting the debt of Dollar of Delaware was of no concern to that company, since as principal debtor it would have been obligated to reimburse the sureties for any payment on the debt they might make. *Restatement of the Law of Security*, comment on Sec. 135, p. 367. The outright transfer of stock to a party providing new financing for a failing corporation is common practice. *French* v. *Shoemaker*, 14 Wall. 314; *Handley* v. *Stutz*, 139 U. S. 417; *Rosenberg* v. *Garfinkel*, 294 Mass. 196, 200 N. E. 907.

The second consideration relied upon by the court of appeals was that the Adjustment Agreement provided for the transfer of the stock to the "Commission, or its nominee" not to the "United States"; that the Commission caused new certificates to be issued in the name of "United States Maritime Commission" rather than the "United States"; and that the Commission continued to hold the certificates "in its own possession without transfer to any recognized repository of property of the United States" (R. 2154). The Maritime Commission was not organized as a government corporation and was not a legal entity separate from the United States. Section 201, 46 U. S. C. 1111; *United States* v. *Remund*, 330 U. S. 539. Hence, the Maritime Commission as such could not acquire any property interest. Any property interest it acquired would necessarily be vested in the United States.[13] Nevertheless, the

[13] *See In the Matter of Dollar-Matson Agreements*, 2 U. S. M. C. 387, 388 (1940): "Matson urges that the Commission is now disqualified from acting on the agreement by reason of its acquisition of 90 percent of the stock of American President Lines, Ltd., and because of its interest under the operating-differential subsidy agreement. * * * The objection to our jurisdiction is not tenable. The interest of the Commission is the interest of the United States, and was acquired in furtherance of the purposes expressed in the Merchant Marine Act, 1936, creating the Commission, and of the Shipping Act, 1916, conferring the regulatory powers here challenged. Neither the Commission nor any of the Commissioners has any personal or private interest. * * * The interest of the Commission in behalf of the public is not such as to disqualify the Commission from acting. * * *"

court of appeals seemed to think that although it was appropriate for the Commission to acquire a pledgee's interest in its own name, any acquisition of outright title should have been in the name of the United States.

It is, of course, not uncommon for government officials and agencies to acquire contract or property rights for the United States in the name of such officials or agencies. See *United States* v. *Remund, supra; In re Wilson,* 23 F. Supp. 236 (N. D. Tex.). The name used is of no legal significance; the substance of such transactions controls, and they inure to the benefit of the Government, not the official or agency. *Hodgson* v. *Dexter,* 1 Cr. 345, 363; *United States* v. *Remund, supra; In re Wilson, supra; North Dakota-Montana Wheat Growers Ass'n.* v. *United States,* 66 F. 2d 573 (C. A. 8).[14]

Nor is there any basis for the view of the court of appeals that the Commission "was an authorized custodian of collateral security" but not of property owned outright by the United States. Every government agency is the custodian of property owned by the United States (*e.g.*, supplies and furnishings). Section 202, as amended, 46 U. S. C.

---

[14] See also *Cherry Cotton Mills, Inc.* v. *United States,* 327 U. S. 536; *Inland Waterways Corp.* v. *Young,* 309 U. S. 517, 523-524; *Federal Crop Insurance Corp.* v. *Merrill,* 332 U. S. 380, 383.

1112, plainly authorized the Commission to hold "property and interests of every kind, owned by the United States."[15]

It follows that whatever construction be given Rule 52(a), the court below erred in setting aside the finding of the district court that what was here involved was a sale and not a pledge.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1950

---

[15] "All money, notes, bonds, mortgages, and securities of every kind, contracts and contract rights, lands, vessels, docks, wharves, piers, and property and interests of very kind, owned by the United States" formerly controlled by the United States Shipping Board, "are hereby transferrd to the Commission."

The provision in Section 206, as amended, 46 U. S. C. 1116, that all money in the construction loan fund, together with the proceeds of all debts, etc., transferred from the Shipping Board to the Commission should be deposited in the Treasury and maintained as a revolving fund available for expenditures by the Commission relates only to money, as appears from the statutory language. Corporate stock obviously cannot be put in a revolving fund and used for expenditures.

APPENDIX A

Section 207 of the Merchant Marine Act of 1936, 49 Stat. 1985, as amended, 52 Stat. 954 (46 U. S. C. 1117), reads in pertinent part as follows:

> SEC. 207. The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this Act, or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. * * *

Section 601(a) and Section 603(a) of the Merchant Marine Act of 1936, 49 Stat. 2001 (46 U. S. C. 1171, 1173), read in pertinent part as follows:

> SEC. 601. (a) The Commission is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States. No such application shall be approved by the Commission unless it determines that * * * (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to

meet competitive conditions and promote foreign commerce; * * *

SEC. 603. (a) If the Commission approves the application, it may enter into a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in such service, route, or line for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this Act, as the Commission shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Commission.

Rule 52(a), Federal Rules of Civil Procedure, reads as follows:

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be

given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

APPENDIX B

THE SECRETARY OF COMMERCE
WASHINGTON 25

SEP 18 1950

The Honorable
J. Howard McGrath
Attorney General
My dear Mr. Attorney General:

Re: R. Stanley Dollar, et al
v. Emory S. Land, et al,
No. 10,299 in the U. S.
Circuit Court of Appeals
For the District of Columbia

Reorganization Plan No. 21 of 1950, which became effective May 24, 1950, abolished the United States Maritime Commission and the offices of its members, and transferred to the Secretary of Commerce the functions of the Maritime Commission other than regulatory and subsidizing functions. As a result, the shares of stock of American President Lines, Ltd., which are the subject matter of the above case, are now in my custody in my official capacity of Secretary of Commerce.

Sincerely yours,

/s/ CHARLES SAWYER
Secretary of Commerce

☆ U.S. GOVERNMENT PRINTING OFFICE 1950—908889/P.O. 208

FILE COPY

FILED
OCT 30 1950
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 353

EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND D. MCKEOUGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MELLEN and J. K. CARSON, JR.,

Petitioners,

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER,

Respondents.

Brief of Respondents in Opposition To Petition for Writ of Certiorari

HERMAN PHLEGER
MAURICE E. HARRISON
GREGORY A. HARRISON
MOSES LASKY
111 Sutter Street
San Francisco 4, California

CLINTON M. HESTER
MICHAEL M. KEARNEY
Shoreham Building
Washington, D. C.

Attorneys for Respondents.

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO

SUBJECT INDEX

	Page
Statement	1
Questions Presented	4
Argument	5
I. There Is No Merit in the Attempt to Obtain Certiorari on the Claim That This Is a Suit Against the United States	5
II. The Court Below Has Not Departed from the Principles of Rule 52(a), R.C.P.	9
Conclusion	14

INDEX OF AUTHORITIES

CASES

	Pages
Bell and Grant v. Bruen, 1 How. 169	13
Brown v. Gesellschaft, etc. Co., 104 F.2d 227	7
Clark v. Keith, 106 U.S. 464	6n
Copp v. Van Hise, 119 F.2d 691	13
Davis v. Davis, 96 F.2d 512	7
General Pictures Co. v. Electric Co., 304 U.S. 175	14
Goldberg v. Daniels, 231 U.S. 218	8
In re Sanford Fork & Tool Co., 160 U.S. 247	6n
Insurance Group v. D. & R. G. W. R. Co., 329 U.S. 607	6
Kuhn v. Princess Lida of Thurn and Taxis, 119 F.2d 704	13
Land v. Dollar, 330 U.S. 731	1, 2, 3, 4, 4n, 5, 6, 7, 8, 9, 12n
Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682	5, 8, 9
Magnum Import Co. v. Coty, 262 U.S. 159	14
Orvis v. Higgins, 180 F.2d 537	9, 11n
Roberts v. Cooper, 20 How. 467	6
Southern Power Co. v. North Carolina Public Service Co., 263 U.S. 508	14
United States v. Gypsum Co., 333 U.S. 364	9, 11
United States v. Johnston, 268 U.S. 220	14
United States v. Lee, 106 U.S. 96	5, 8
United States v. Yellow Cab Co., 338 U.S. 338	11n

MISCELLANEOUS

Remarks of Chief Justice Hughes before the American Law Institute in June 1934 (20 American Bar Assn. Journal 341)	14n
Remarks of Chief Justice Vinson before the American Bar Assn. Sept. 7, 1949 (70 S.Ct. xiii)	14n
Rules of Civil Procedure: Rule 52(a)	9, 11

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 353

EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND D. McKEOUGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MELLEN and J. K. CARSON, JR.,

Petitioners,

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER,

Respondents.

Brief of Respondents in Opposition To Petition for Writ of Certiorari

STATEMENT

The case may be succinctly stated by quotations from this Court's opinion in *Land v. Dollar*, 330 U.S. 731.

"Petitioners are present and former members of the United States Maritime Commission. Respondents are stockholders of Dollar Steamship Lines, Inc., Ltd. (Dollar of Delaware), whose corporate name was changed to American President Lines, Ltd. * * *. It is sufficient for purposes of the various questions presented by this case to say that the

All emphasis in quotations has been added.

Commission and respondents entered into a contract in 1938 by which respondents delivered their common stock in Dollar of Delaware, endorsed in blank, to the Commission * * *. (733)

"* * * By 1943 American President Lines, Ltd., had fully paid all indebtedness due the United States. Respondents thereupon demanded return of their shares of stock from the then members of the Commission, claiming that the shares had only been pledged as collateral for a debt which had been paid. The members of the Commission refused to surrender the shares, claiming that they had not been pledged under the 1938 contract but transferred outright. * * *

"Thereupon respondents instituted the present suit in the District Court for the District of Columbia * * * claiming that petitioners were unlawfully in possession of respondents' stock and illegally withholding it. The prayer was that petitioners be restrained from selling the shares and be directed to return them to respondents. * * * the District Court on its own motion dismissed the complaint with prejudice, holding that the suit was against the United States. The Court of Appeals reversed. 154 F.2d 307. * * * (734)

"* * * this is the type of case where the question of jurisdiction is dependent on decision of the merits.

"The allegations of the complaint, if proved, would establish that petitioners are unlawfully withholding respondents' property under the claim that it belongs to the United States. *That conclusion would follow if either of respondents' contentions were established:* (1) that the Commission had no authority to purchase the shares or acquire them outright; *or* (2) *that, even though such authority existed, the 1938 contract resulted not in an outright transfer but in a pledge of the shares.* (735, 736) * * *

"* * * *if it is decided on the merits either* that the contract was illegal *or that respondents are pledgors, they are entitled to possession of the shares as against petitioners,* though, as we have said, the judgment would not be *res judicata* as against the United States." (739)

This Court thereupon affirmed the decision of the Court of Appeals, the cause was remanded to the District Court, and subsequently tried. The vast bulk of the evidence was documentary, authenicated by stipulation, and most of the remainder was likewise stipulated (cf. R. 285-7, 297). There was some oral testimony, but it was without conflict.

The District Court held that the contract of 1938 was one of sale and not of pledge. It also held that the Commission had power to take absolute title to the stock.

On appeal the Court of Appeals reversed (R. 2159). It did not pass on the question whether the Commission had power to take absolute title. "We do not decide that question," it said, "because we do not reach it." (R. 2147.) It did not reach it because it found that the 1938 contract was not a sale but a pledge (R. 2158). Consequently, it was unnecessary to decide whether, had it been a sale, the transaction would have been within the Commission's authority, for, as this Court had held, the conclusion that "petitioners are unlawfully withholding respondents' property * * * would follow * * * even though such authority existed, [if] the 1938 contract resulted not in an outright transfer but in a pledge of the shares." (330 U.S. at 735, 736)

Having found that the contract was for a pledge, the court below then followed the command of this Court that, "if it is decided on the merits * * * that respondents are pledgors, they are entitled to possession of the shares as against petitioners * * *." (330 U.S. at 739)

In reaching its conclusion as to the nature of the 1938 contract, the court below made it plain that it did so because "any other conclusion * * * would be *wholly untenable* in our opinion" (R. 2157).

The petition contains a highly colored, incomplete and inaccurate statement of facts, culling bits of evidence from a record of more than 2000 pages, interspersed with inferences and argument, which it hopes sustains petitioner's contention that the con-

tract should have been construed as a sale. Some of the factual assertions are erroneous and unsupported by the record references given by the petition.*

But we shall not discuss these matters because we think them irrelevant to any question properly presentable on application for certiorari (see pp. 13, 14, infra) and because *the opinion of the Court of Appeals thoroughly and comprehensively reviews the facts. The petitioners make no claim that this review is inaccurate or omits any of the controlling facts.*

QUESTIONS PRESENTED

We do not agree with petitioners' statement of the questions which they seek to present. A more correct statement is the following:

1. This Court has held that a particular suit to recover possession of personalty is not one against the United States if the transaction by which government officials had obtained possession was a pledge, and it remanded the case for trial to determine the nature of the transaction. Thereafter the court below determined on the merits that the transaction was a pledge. May the defeated party obtain certiorari in order to argue that this Court should reconsider and reverse its prior decision?

---

*By way of example:

(1) It is said (Pet. 4, without record reference) that Dollar of Delaware was in default on obligations to the government prior to the execution of the contract in August 1938. In fact in had not been in default at all for over six months (Second Blue Book, 231, R. 282).

(2) It is said (p. 8) that a certain accountant's report was "approved by the stockholders of Dollar of California." The stockholders approved no report but only a balance sheet not containing the material referred to (R. 1514).

(3) It is said (p. 8) that Mr. Dollar and Mr. Lorber in their respective tax returns wrote off ownership on the ground they had transferred "all right, title and interest." Neither wrote off ownership, and the quoted words do not appear in the tax returns or anything else pertaining to Lorber (R. 1760-63). Certain testimony re Lorber cited in the petition, R. 1765-69, was stricken by the trial court.

2. In reversing a trial court, a Court of Appeals makes it plain that it has done so because it is convinced that the trial court's determination is clearly erroneous and that on the entire evidence it is left with the definite and firm conviction that a mistake had been committed. Is the Court of Appeals required in its opinion to express its reasons in exactly those words?

ARGUMENT

I.

There Is No Merit in the Attempt to Obtain Certiorari on the Claim That This Is a Suit Against the United States

The contract of 1938 was a pledge. It is on this postulate of fact that the issue whether this is a suit against the United States is now tendered and must now be judged, for this is the fact as determined by the court below.

This Court has already decided this very question against petitioners in this very case. *Land v. Dollar*, 330 U.S. 731.

Petitioners do not claim that the court below misread that decision. What they claim is that subsequently, in *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, this Court changed its view of the law.

Larson did not make any change whatever in the law applied in *Land v. Dollar* or any change in the doctrine of *United States v. Lee*, 106 U.S. 196, as followed in *Land v. Dollar*.

But before showing that to be so, we note the truly extraordinary nature of petitioner's request for reconsideration. When petitioners in 1946 applied for certiorari in this very case, respondents objected that the decision of the Court of Appeals then sought to be reviewed was interlocutory only, since it remanded the case for trial, and they referred to the principle that certiorari is not ordinarily granted to review such a decision. Recognizing that principle, this Court stated why it nevertheless granted the writ: —

> "The case is here on a petition for a writ of certiorari which we granted because of the importance of the question presented." (330 U.S. 734)

and explained (footnote 2, p. 734):

> "Although the judgment below was not a final one, we considered it appropriate for review because it involved an issue 'fundamental to the further conduct of the case'."

This Court then decided that issue. It laid down, as the "law of the case," that if respondents should prove that the 1938 contract was a pledge, the suit was not one against the United States and respondents would be entitled to recover. This Court further held that if respondents established that fact,

> "The dominant interest of the sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld." (330 U.S. 738)

Although this Court in 1946 departed from its usual rule not to grant certiorari at an interlocutory stage and did so in order to settle the issue as a guide for future conduct of the case, and although it then settled the issue, petitioners now, nearly four years later, seek a belated rehearing and ask the Court to reverse itself.

Petitioners argue that the doctrine of the "law of the case" is only a rule of practice, not a restriction on power. But it is a rule of practice strictly adhered to because it is based upon the sound policy that when an issue is once litigated and decided, that should be the end of the matter, and because "orderly judicial action, except in unusual circumstances, requires it [the court] to refuse to permit the relitigation of matters or issues previously determined on a former review." *Insurance Group v. D. & R. G. W. R. Co.,* 329 U.S. 607, 612.

As said in *Roberts v. Cooper,* 20 How. 467, 481:

> "To allow a second writ of error or appeal to a court of last resort on the same questions which were open to dispute on the first, would lead to endless litigation. * * * there would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate on chances from changes in its members."*

---

*See also *Clark v. Keith,* 106 U.S. 464; *In re Sanford Fork & Tool Co.,* 160 U.S. 247, 259.

A court should depart from its former determination in a particular case only "if a clear case were presented showing that the earlier adjudication was plainly wrong and that application of the rule would work manifest injustice." *Brown v. Gesellschaft, etc. Co.*, 104 F.2d 227, 228 (D.C. Cir.); *Davis v. Davis*, 96 F.2d 512, 515 (D.C. Cir.).*

We submit that here the very reverse is the case and that petitioners' request for review of the issue is nothing short of amazing. Relying on the "law of the case" as announced by this Court in 1947, respondents have gone through years of litigation and have incurred great expense in preparation, trial and appeal. A citizen has pledged his property to the government to secure a debt; for that purpose he has entrusted custody to government officials; thereafter the debt is paid. The right of the government officials to retain possession has ceased. The owner is entitled to the return of his property. Never at any stage of the litigation have petitioners suggested that they may lawfully withhold possession if the 1938 transfer was by way of pledge. *They do not so claim even now.* Yet the officials refuse to return possession, and the citizen sues to regain it. If such a suit is held to be one against the United States, the citizen has no remedy. He has no remedy in the Court of Claims, since his cause of action sounds in tort and not contract. Moreover, his just claim is for the return of his property, the kind of relief which the Court of Claims cannot give, and, as this Court said in *Land v. Dollar*, 330 U.S. at 738:

> "And where they [public officials] wrongfully seize *or hold* a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment."

We submit that to depart from the "law of the case" would here be "manifest injustice."

---

*The very meaning of the "law of the case" is that a prior decision of the court fixes the law for the purpose of the particular case even though the court should later believe that its decision was erroneous.

Nor does *Larson* lend any support to the request that this Court do so. There plaintiff claimed that it had purchased certain property from the United States through the War Assets Administrator, and that the Administrator was breaking the contract in refusing to deliver. Plaintiff's suit, in essence, was to compel specific performance by the vendor, the United States. Ownership was sought to be derived from the United States, and a decree of court was necessary to effect that transfer to plaintiff.

Here respondents claim no title through or from the United States. Ownership started in respondents and, the contract being a pledge, ownership never left them. Possession is returnable not because of any contractual promise but on common law tort principles (*Land v. Dollar,* supra, at 736).

When the case was last here this very distinction was recognized by the Court in its opinion (330 U.S. 731 at 737, 738). The Court expressly noted (330 U.S. at 737) that this case is *not* like *Goldberg v. Daniels,* 231 U.S. 218. By contrast, in the *Larson* case the court noted that *Goldberg v. Daniels* "present[ed] a parallel to the facts" of the *Larson* case (337 U.S. at 700, 701, and footnote 25).

Petitioners argue that, under *Larson,* it can be said that suit is not one against the United States only where government officials act beyond their statutory authority or under an unconstitutional statute. But where, as here, possession is obtained under a pledge, there is neither statutory authority nor constitutional power to retain possession after the debt is paid. The officials then act as individuals. They act "in excess of their authority as public officers" (*Land v. Dollar,* supra, at 738). The transaction having been a pledge, the refusal to surrender was an unconstitutional deprivation as defined in the main opinion in *Larson* (337 U.S. at 697), and, as there stated (p. 697), in such a situation suit lies under the doctrine of *United States v. Lee,* supra.

The petition comments (p. 14) that the author of the opinion in *Land v. Dollar* concurred in the *Larson* decision. It is to be

noted that he did so precisely on the distinction noted above, i.e., that the principles announced in *Larson* "are the ones which should govern the selling of government property" (337 U.S. at 705).

It is evident that petitioners' Question No. 1 (Pet. 2, 3) is erroneous. This is not a suit contesting the "title" of the United States to property in "its" possession. It is not (as asserted, Petition p. 16) a case where the "government" is making a claim to ownership. This is a possessory action. The subject matter is possession, not title. The contract being a pledge and the debt paid, possession is in the hands of individuals, not the United States. This Court has so held in *Land v. Dollar.*

II.

The Court Below Has Not Departed from the Principles of Rule 52(a), R.C.P.

The court below prefaced its consideration of the facts by stating (R. 2145), "The rule by which we are guided in our examination of the findings of the trial court in this case was laid down by the Supreme Court in *United States v. Gypsum Co.*"

It then quoted that statement in the *Gypsum* case (333 U.S. 364) that under Rule 52(a) a finding is "clearly erroneous," and the appellate court may reverse it, "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (R. 2145, 2146.) It then quoted from *Orvis v. Higgins,* 180 F.2d 537, in which this Court denied certiorari October 9, 1950. (R. 2146.)

After then carefully reviewing the facts it said (R. 2153):

> "It seems *plain beyond question* that if this transfer had occurred between two private individuals no court of equity would have treated the transfer of the shares as other than a pledge."

Again (R. 2157):

> *"Any other conclusion,* if the transaction were between private parties, *would be wholly untenable* in our opinion. We do not see why the transaction should have a different essential nature merely because a Government agency was a party."

Still again, it described petitioners' reasoning as *"fallacious logically"* and as leading "us far from the actual and essential nature of the transaction." (R. 2158).

The gist of petitioners' argument is that the court did not use the exact words that the finding of the District Court was "clearly erroneous" or that the court "on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

But what the court did say is the equivalent. Certainly it is not necessary for a Court of Appeals to use, slavishly, ritualistic language. Petitioners' argument is mere formalism.

Petitioners argue that where the evidence permits two reasonable inferences, an appellate court may not set aside the choice made by the trial court. But the court below held that there was no choice of reasonable inferences here. The choice made by the trial court was, it said, *"wholly untenable."* Petitioners select language from the opinion to the effect that the decision depended upon the comparative evaluation of various indices some pointing one way and some another. But it is a *non sequitur* that both inferences were reasonable. The court catalogued and reviewed every argument advanced by petitioners to support the construction of the contract as a sale, and it found none of them persuasive (R. 2149-2151). Then it catalogued and reviewed every argument of respondents (R. 2151-2152). While it felt that some were inconclusive, it found the force of others inescapable. Moreover, the question was not what conclusion should be drawn if there were only one item of evidence in the record, or only one of several indices, but the conclusion called for by the whole body of evidence, by all indices taken in conjunction. And on "the entire evidence" the Court of Appeals was of the definite

and firm conviction that no view other than a pledge was tenable.*

Under Rule 52(a) the power of a Court of Appeals to reverse a finding is not confined to cases where the inference drawn by the trial court is not tenable at all:—"although there is evidence to support it," the appellate court may reverse when "on the entire evidence" it is firmly convinced that it is wrong *(United States v. Gypsum Co.*, supra). *A fortiori*, it may do so when, as here, it is convinced that the trial court's determination is "wholly untenable."

Petitioners assert that there was conflicting evidence in the case, and they talk of credibility of witnesses. But the Court of Appeals tells us otherwise:—"the findings of the trial judge rested entirely upon documentary evidence or undisputed basic facts" (R. 2146). This statement of the Court of Appeals is correct. The trial court's opinion, which that court adopted as its finding (R. 276), contains no reference to credibility or to any conflict in evidence (R. 269-275). It shows on its face that

United States v. Yellow Cab Co., 338 U.S. 338, cited by petitioners, was not a certiorari case but came before this Court on a direct appeal. In his brief in opposition to certiorari in *Orvis v. Higgins*, October Term, 1950, No. 56, certiorari denied Oct. 9, 1950, the Solicitor General said:

> "*United States v. Yellow Cab Co.*, 338 U.S. 338, does not preclude the substitution by the Court of Appeals of its factual conclusion for that of the District Court in the circumstances of this case. On the contrary, this Court there reaffirmed the duty of the appellate court to correct a finding of fact which is clearly erroneous but summarized that case as being one in which the trial court's ultimate findings were not erroneous since the trial court had made factual choices between two permissible views, either of which would have been supported by the evidence, and since the findings, in so far as they related to intent, depended peculiarly upon the credit given to witnesses by the trial court. * * * As the opinion of the Court of Appeals makes amply clear, those circumstances are not present in this case. There is thus no conflict with the *Yellow Cab* decision."

We adopt that statement as precisely applicable here.

its finding was a mere deduction from undisputed facts.* *Nor does the petition point to a single instance of conflict.* On no matter upon which any witness orally testified has there ever been any dispute, contradiction or issue of credibility. None has ever been pointed to in any brief at any stage, and *none is pointed to in the petition.*†

---

*There was only one disputed fact in the case—the value of ships of Dollar of Delaware mortgaged to the United States. On this the trial court refrained from making any finding at all (R. 275). And this issue the Court of Appeals similarly found it unnecessary to decide (R. 2155).

†The petition asserts (p. 18) that "on the question of intent of the parties to the transaction" there were 6 witnesses for respondents and 7 for petitioners. This assertion is entirely erroneous and must be the result of unfamiliarity with the record.

Of the 6 witnesses called by petitioners, the testimony of one (Graustein) was excluded and of another (Moon) stricken by the trial court (R. 1947, 1953, 1765, 1767, 1773, 1774). Another (Poole, R. 1847-1851) merely gave an accounting opinion as to stock value based on hypothetical assumptions as to asset values. Two others testified to trifles the truth of which is not disputed, although their relevance was; one of the two (Reavis) merely testified that the Commission had never made a repair loan to any other company (R. 1953); the other (Roland) merely testified that at a date subsequent to the execution of the contract she mailed a press release (R. 1834). As to the others, respondents relied on their testimony and welcomed it (Wilcox, R. 1816; Laughlin, R. 1774). In respondents' reply brief in the court below we said (p. 34), "On this appeal we take the testimony of Mr. Laughlin (defendants' witness) wherever he positively testified to anything as a fact."

Of the 6 witnesses called by respondents, one (Hopkins) merely identified papers dated October 1937 (R. 493). Two (Radner and Houlihan) (R. 545, 966), former officials of the Commission, testified only to events preceding May 1938, a time when not even petitioners deny that the discussions pertained to security only (cf. R. 2154). Their testimony has never been questioned. Two (Hall, R. 416, 1273, Dunham, R. 2031) gave purely accounting testimony, also never questioned. As to the sixth (Dollar, R. 768, 1167) no fact testified to by him has ever been questioned, the trial court stated that it believed him (e.g., R. 976), and his testimony does not enter into the decision of the court below. Dollar testified that no mention was made of "sale" or "outright transfer" in the oral

In short, the Court of Appeals approached the case with a full understanding of the principles which govern review of findings and with the clearest intention to apply those rules, and it decided the case with the firm conviction that it had done so. And in fact it did.

Furthermore, the issue on which the court below reversed the trial court was the interpretation or construction of a contract. When, as here, the construction of a contract is to be reached from undisputed facts, it presents an issue of law, not of fact. *Bell and Grant v. Bruen*, 1 How, 169 183; *Copp v. Van Hise*, 119 F.2d 691, 695 (9 Cir.); cf. *Kuhn v. Princess Lida of Thurn and Taxis*, 119 F.2d 704, 705, 706 (3 Cir.).

The remainder of the petition (pp. 20, et seq.) is no more than a complaint that the court below erred in its conclusion that the finding of the trial court was clearly erroneous. *Such a complaint merely asks this Court to review and reweigh the evidence.* The question whether the trial court's finding was clearly erroneous was an issue for the Court of Appeals to decide. Whether it erred is not a question of general importance. We submit that it is not the kind of question which warrants the granting of certiorari. If it were, this Court would be reviewing every case where a Court of Appeals reversed a finding. Petitioners are, in this respect, just one more group of disappointed litigants in just another factual case.

We take it to be elementary that in the exercise of its certiorari jurisdiction this Court is not and should not be concerned with the facts of a particular case or the interpretation of a particular contract, for every contract stands on its own feet.

---

discussions with Laughlin (R. 1169); Mr. Laughlin admitted that to be so, testified that nothing more was said than appears in the written agreement, and said that the word "pledge" was not used either (R. 1800, 1801), but Dollar did not say that it was. There was no conflict between them.

Respondents submitted the case in the court below with the statement that the testimony of petitioners' witnesses "was largely irrelevant and was excluded and what was admitted may be accepted" (opening brief, p. 114).

This Court has often said that "We do not grant a certiorari to review evidence and discuss specific facts," *United States v. Johnston,* 268 U.S. 220, 227, or "to review the evidence or inferences drawn from it," *General Pictures Co. v. Electric Co.,* 304 U.S. 175, 178, or to "give the defeated party in the Circuit Court of Appeals another hearing" on matters peculiar to a single controversy. *Magnum Import Co. v. Coty,* 262 U.S. 159, 163. *Southern Power Co. v. North Carolina Public Service Co.,* 263 U.S. 508. And it has called on the bar to cooperate by not presenting applications for certiorari where the questions raised relate to particular contracts and turn on the facts of particular cases.*

With that admonition in mind, we refrain from embarking on a discussion of the evidence, which overwhelmingly supports the decision of the court below. A summary appears in the opinion of the court below, and petitioners do not question its fairness.

CONCLUSION

The court below made no decision of any question of federal law. On the contrary, it simply followed the law of the case established by this Court, as it was bound to do. Its decision was not based upon interpretation of any federal statute, any treaty,

---

*Cf. remarks of Chief Justice Hughes before the American Law Institute in June 1934 (20 American Bar Ass'n Journal 341):

> "As litigation increases, we cannot hope to discharge this duty [of passing upon applications for certiorari] and keep the Court abreast of its proper work, without the cooperation of the Bar. And the cooperation we need must be found in the self-imposed restraint which will prevent lawyers from presenting applications which are devoid of merit. * * * For example, we have many applications where the questions raised are those relating to particular contracts or transactions and turn upon the facts of particular cases, and there is no controversy of importance with respect to legal principles."

And see remarks of Chief Justice Vinson before the American Bar Association, September 7, 1949 (70 S. Ct. xiii).

or the Constitution of the United States. It presents no conflict with any decision of this court or any Court of Appeals.

The petitioners assert that the government will profit financially if respondent's suit to recover is defeated, and on this ground they urge that the petition should be granted (Pet. 16). Apart from the fact that the government has yet to assert any claim in the premises and that the assertion is merely that of individuals, the financial stake of the government in defeating a suit offers no reason for this Court to grant a review. All that the court below did was to interpret a contract, and the monetary consequence of that interpretation does not call for the application of different principles than those governing the grant of certiorari in any other suit.

The litigation is about to enter its sixth year. It is submitted that the time has come when, paraphrasing what this Court has said in this case (see p. 6, supra), the dominant interest of the sovereign is on the side of the victim who has brought this possessory action; instead of protracting the suit that interest should bring it to an end with a surrender of the property wrongfully withheld for so long.

It is respectfully submitted that the petition should be denied.

Dated, San Francisco, California, October 26, 1950.

HERMAN PHLEGER
MAURICE E. HARRISON
GREGORY A. HARRISON
MOSES LASKY
CLINTON M. HESTER
MICHAEL M. KEARNEY
Attorneys for Respondents.

FILED
OCT 30 1950
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 353

EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND D. McKEOUGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MELLEN and J. K. CARSON, JR.,

Petitioners,

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER,

Respondents.

Respondents' Memorandum Relative to Petitioners' Motion to Substitute.

HERMAN PHLEGER
MAURICE E. HARRISON
GREGORY A. HARRISON
MOSES LASKY
111 Sutter Street
San Francisco 4, California
CLINTON M. HESTER
MICHAEL M. KEARNEY
Shoreham Building
Washington, D. C.

Attorneys for Respondents.

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO

INDEX OF AUTHORITIES

Cases

	Pages
Ex Parte Railroad Co., 95 U.S. 221	3
In re Lennon, 166 U.S. 548	4
Lacassagne v. Chapuis, 144 U.S. 119	3
Lamb v. Cramer, 285 U.S. 217	3
Land v. Dollar, 330 U.S. 731	2
New Jersey National Bank & Trust Co. v. Berkshire, 156 Atl. 40, 9 N.J.M. 933	3
Rivera v. Lawton, 35 F.2d 823	4
Walling v. Reuter Co., 321 U.S. 671	4
Wetherbee v. Dunn, 36 Cal. 147	3

Statutes and Rules

Reorganization Act of 1949:	
Section 9(b)	2, 3
5 U.S.C. 133 z-7(b)	2
Rules of Civil Procedure:	
Rule 25(c)	3, 3n

Miscellaneous

34 Am. Jur.:	
Section 2, p. 363	3
Section 17, p. 375	3

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 353

EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND D. McKEOUGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MELLEN and J. K. CARSON, JR.,

Petitioners,

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER,

Respondents.

Respondents' Memorandum Relative to Petitioners' Motion to Substitute.

Upon filing the petition for certiorari the Solicitor General has also filed a motion to substitute Charles Sawyer in place of petitioners (the defendants). Concurrently with this memorandum respondents are filing their brief in opposition to the petition.

We respectfully suggest that this Court should not pass on the motion to substitute but should transmit it to the District Court, on remand of the case, for a ruling.

In 1946 defendants petitioned this Court for certiorari in this very case (No. 207, Oct. Term, 1946). Just as now, the petition

was accompanied by a motion to substitute new members of the United States Maritime Commission for former members as defendants. Respondents filed a memorandum consenting to the addition of the new members as defendants but objecting to substitution. Upon granting certiorari at that time, the Court added the new members but reserved decision as to the former members. When it later decided the case, it vacated its order so that the District Court could pass on the motion (*Land v. Dollar*, 330 U.S. 731 at 739).

By order of the District Court after remand the new members were "added as and made parties defendant herein, in addition to and not by way of substitution for any other defendant" (R. 51). The case thereafter proceeded against the old and the new defendants, all of whom now constitute the petitioners.

Petitioners predicate their motion to substitute on Section 9(b) of the Reorganization Act of 1949 (5 U.S.C. 133 z-7(b)). That statute has no application, for it relates to actions against "the head of any agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties."

This is not such an action. It is an action against defendants as individuals wrongfully withholding possession from respondents and thus committing a personal tort. (So held, *Land v. Dollar*, 330 U.S. 731, and see our brief in opposition to petition for certiorari filed contemporaneously with the present memorandum.)

Mr. Sawyer's letter of September 18, 1950 to the Attorney General (a copy of which is attached to the petition for certiorari and which is referred to in the motion to substitute) asserts that the shares of stock are now in his custody "in my official capacity of Secretary of Commerce." But this assertion as to the capacity in which he holds custody is no more than an erroneous conclusion of law. Anyone who sees fit to take possession from those who held it wrongfully and as individuals likewise holds it wrongfully as an individual and not as an official (*Land v. Dollar*, supra).

After remand it would be appropriate, but not necessary, to add Mr. Sawyer's name to the record as a defendant, and this can be done, not under Section 9(b) of the Reorganization Act, but under Rule 25(c), R.C.P.*

By taking possession from defendants during pendency of the suit to determine the right to possession, Mr. Sawyer has subjected himself to the final judgment without addition on the record of his name as a defendant. His name may be added of record as a party, but, whether it is or not he may be proceeded against as if a party, for once a court has taken cognizance of a controversy, no interference with consummation of the judgment by any *ad interim* transfer or change of possession will be allowed. *Lamb v. Cramer,* 285 U.S. 217; *Lacassagne v. Chapuis,* 144 U.S. 119; *Ex Parte Railroad Co.,* 95 U.S. 221, 226; *Wetherbee v. Dunn,* 36 Cal. 147; *New Jersey National Bank & Trust Co. v. Berkshire,* 156 Atl. 40, 9 N. J. M. 933; 34 Am. Jur. p. 363, Sec. 2; p. 375, Sec. 17.

But, while Mr. Sawyer may be added as a defendant after remand, he should not be substituted for the petitioners, thereby relieving them as defendants. They have already personally committed a tort by withholding possession from respondents at a time when they had custody of respondents' property. Moreover, after the remand in 1947 the District Court entered its order upon stipulation that, until the final determination of the case, the defendants would not, in any way, sell, transfer, or otherwise dispose of the possession or custody of any of the shares of stock (R. 53). Petitioners remain answerable.

Mr. Sawyer has had notice of that order. Copies of certain correspondence with him are attached to this memorandum. While

---

*"In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule."

he would be bound even though no such order had ever issued (see authorities, supra), its existence is an added reason. *In Re Lennon*, 166 U.S. 548; *Walling v. Reuter Co.*, 321 U.S. 671; *Rivera v. Lawton*, 35 F.2d 823 (1st Cir.).

Respectfully submitted,

HERMAN PHLEGER
MAURICE E. HARRISON
GREGORY A. HARRISON
MOSES LASKY
CLINTON M. HESTER
MICHAEL M. KEARNEY
Attorneys for Respondents.

October 26, 1950.

(APPENDIX FOLLOWS)

Appendix

BROBECK, PHLEGER & HARRISON
Attorneys at Law
ONE ELEVEN SUTTER STREET
SAN FRANCISCO 4

Via Air Mail

May 31, 1950

Honorable CHARLES SAWYER,
Secretary of Commerce,
United States Department
of Commerce,
Washington, D. C.

Re: *Dollar v. Land*—No. 10299 United States Court of Appeals for the District of Columbia Circuit.

Dear Sir:

As you know, the above action is now pending in the United States Court of Appeals for the District of Columbia Circuit. The defendants are former members of the United States Maritime Commission, now terminated by Reorganization Plan No. 21 of 1950. This suit involves the right to possession of 92% of the voting stock of American President Lines, Ltd. represented by certificates of stock held in the custody of defendants or some of them. The defendants are represented in the action by attorneys in the Department of Justice. We represent the plaintiffs.

On June 11, 1947, an order was entered in the cause in the United States District Court for the District of Columbia that

> "until the final determination of this case, the defendants will not, nor will any of them, either directly or through any agents, assistants, deputies, or employees sell, transfer, or otherwise dispose of the possession or custody of any of the shares of stock which are the subject matter of this suit or of any of the certificates representing said shares of stock unless prior thereto they shall have given to the plain-

tiffs at least twenty days notice in writing of their intention to do so, so that plaintiffs may have an opportunity to apply to the Court for a restraining order or an injunction pendente lite or both."

The effect of the order was to enjoin any disposition of the custody of the stock and certificates so as to protect the jurisdiction of the courts in the suit to subject the stock to final judgment.

We do not know whether, in view of Reorganization Plan No. 21, any attempt has been or will be made to transfer the custody of the stock certificates to you or to someone under your supervision. If so, any custody so obtained by you will be subject to the foregoing order and to the ultimate judgment of the court.

Very truly yours,

BROBECK, PHLEGER & HARRISON
By MOSES LASKY.

ML:MS

cc: Honorable H. G. Morison
Assistant to the Attorney General

THE SECRETARY OF COMMERCE
WASHINGTON 25

June 16, 1950

MOSES LASKY, Esquire
Brobeck, Phleger & Harrison
Attorneys at Law
One Eleven Sutter Street
San Francisco 4, California

Dear Mr. Lasky:

Receipt is acknowledged of your letter of May 31, 1950, on the case of *Dollar v. Land*, action No. 10299 in the United States Court of Appeals for the District of Columbia Circuit.

I am sending a copy of this acknowledgment to the Attorney General of the United States.

Sincerely yours,

(Signed) CHARLES SAWYER
Secretary of Commerce

FILED
FEB 19 1951
CHARLES ELMORE CROPLEY
CLERK

Nos. 353 and 552

IN THE

Supreme Court of the United States

October Term, 1950

EMORY S. LAND, ET AL., *Petitioners*

v.

R. STANLEY DOLLAR, ET AL.

CHARLES SAWYER, Secretary of Commerce, *Petitioner*

v.

R. STANLEY DOLLAR, ET AL.

EMORY S. LAND, ET AL., *Petitioners*

v.

R. STANLEY DOLLAR, ET AL.

MOTION FOR LEAVE TO FILE A BRIEF FOR *Amici Curiae* IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI AND FOR REHEARING

WARNER W. GARDNER
734 - 15th Street, N. W.
Washington 5, D. C.
Counsel for Amici Curiae

WILSON - EPES PRINTING CO. - RE 6003 - WASHINGTON 1, D. C.

IN THE

Supreme Court of the United States

October Term, 1950

Nos. 353 and 552

EMORY S. LAND, ET AL., *Petitioners*

v.

R. STANLEY DOLLAR, ET AL.

CHARLES SAWYER, Secretary of Commerce, *Petitioner*

v.

R. STANLEY DOLLAR, ET AL.

EMORY S. LAND, ET AL., *Petitioners*

v.

R. STANLEY DOLLAR, ET AL.

MOTION FOR LEAVE TO FILE A BRIEF FOR *Amici Curiae* IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI AND FOR REHEARING

Come now Ralph K. Davies, Gustav Epstein, Warren G. Epstein, Elise G. Salz and Reina J. Sheehan by their counsel and move this honorable Court for leave to file a brief as *amici curiae* in support of the Government

petitions for writs of certiorari and rehearing in the above entitled cases.

The Solicitor General has consented that such a brief be filed. Counsel for respondents has refused to consent.

Ralph K. Davies is a Director and a minority stockholder, and the other *amici curiae* are minority stockholders, of American President Lines, Ltd., (APL). They appear on behalf of themselves and all other minority stockholders similarly situated. They wish briefly to show to the Court that: (1) Of the 419 minority common stockholders in APL some 418 persons have acquired their stock interest after the transfer of control to the Government. They hold about 21% of the total common stock equity. In addition some 193 persons have acquired preferred stock, aggregating 24% of the total issue, since control of the line passed to the Government. (2) They could not prudently have acquired a minority interest under Dollar management, for the line was insolvent and had for a number of years been bled for the benefit of the Dollar interests. (3) It was believed by all concerned, on compelling grounds, that the Dollar interests had in 1938 sold outright all their stock interest to the Maritime Commission. (4) Under Government-appointed management APL has been completely rehabilitated and is a sound and prosperous shipping line. (5) The minority investment would lose most of its value and all of its attraction should Dollar control be restored. (6) The present petitions therefore carry with them the heavy equities of the minority stockholders as well as the larger interests of the public Treasury and the merchant marine.

Respectfully submitted,

WARNER W. GARDNER
734 - 15th Street, N. W.
Washington 5, D. C.
Counsel for Amici Curiae

FEBRUARY 1951

FILED
FEB 23 1951

IN THE

Supreme Court of the United States

October Term, 1950.

Nos. 353 and 552.

EMORY S. LAND, *et al.*, *Petitioners*,

v.

R. STANLEY DOLLAR, *et al.*

CHARLES SAWYER, Secretary of Commerce, *Petitioner*,

v.

R. STANLEY DOLLAR, *et al.*

EMORY S. LAND, *et al.*, *Petitioners*,

v.

R. STANLEY DOLLAR, *et al.*

OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

GREGORY A. HARRISON,
MOSES LASKY,
CLINTON M. HESTER,
Attorneys for Respondents.

Dated: February 23, 1951.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

October Term, 1950.

Nos. 353 and 552.

EMORY S. LAND, *et al., Petitioners,*

v.

R. STANLEY DOLLAR, *et al.*

CHARLES SAWYER, Secretary of Commerce, *Petitioner,*

v.

R. STANLEY DOLLAR, *et al.*

EMORY S. LAND, *et al., Petitioners,*

v.

R. STANLEY DOLLAR, *et al.*

OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

Come now the respondents and oppose the motion of Ralph R. Davies, et al., for leave to file a brief as amici curiae.

The motion is predicated upon a series of statements with not a single supporting reference to the record.

Although the facts so alleged reflect discredit upon the respondents, they are not sworn to or averred by any one claiming knowledge thereof. Had these alleged facts ever been tendered by way of defense in this suit they would have been rejected as irrelevant and impertinent. It is therefore necessary that the respondents deny the facts alleged.

In truth and in fact applicant Davies is a director but has never been a stockholder of record of the American President Lines, Ltd. and the remaining applicants own in the aggregate only one-fifth of one per cent of the voting shares of the company.

The moving parties state that they "appear on behalf of themselves and all of the other minority stockholders similarly situated." This is to say the least presumptuous and it is untrue; for, as the applicants well know, the respondents and their associates are the admitted owners of more than a million dollars in par value of stock of record and there is no basis to suppose that the 414 other stockholders mentioned in the motion entertain any of the views presumptuously imputed to them by the applicants.

The motion, we submit, being of such a character, is not only to be denied but should be stricken from the files as scandalous and impertinent and an attempt to bring improper considerations before the Court.

Dated: February 23, 1951.

GREGORY A. HARRISON,
MOSES LASKY,
CLINTON M. HESTER,
Attorneys for Respondents.

No. 353

In the Supreme Court of the United States

OCTOBER TERM, 1950

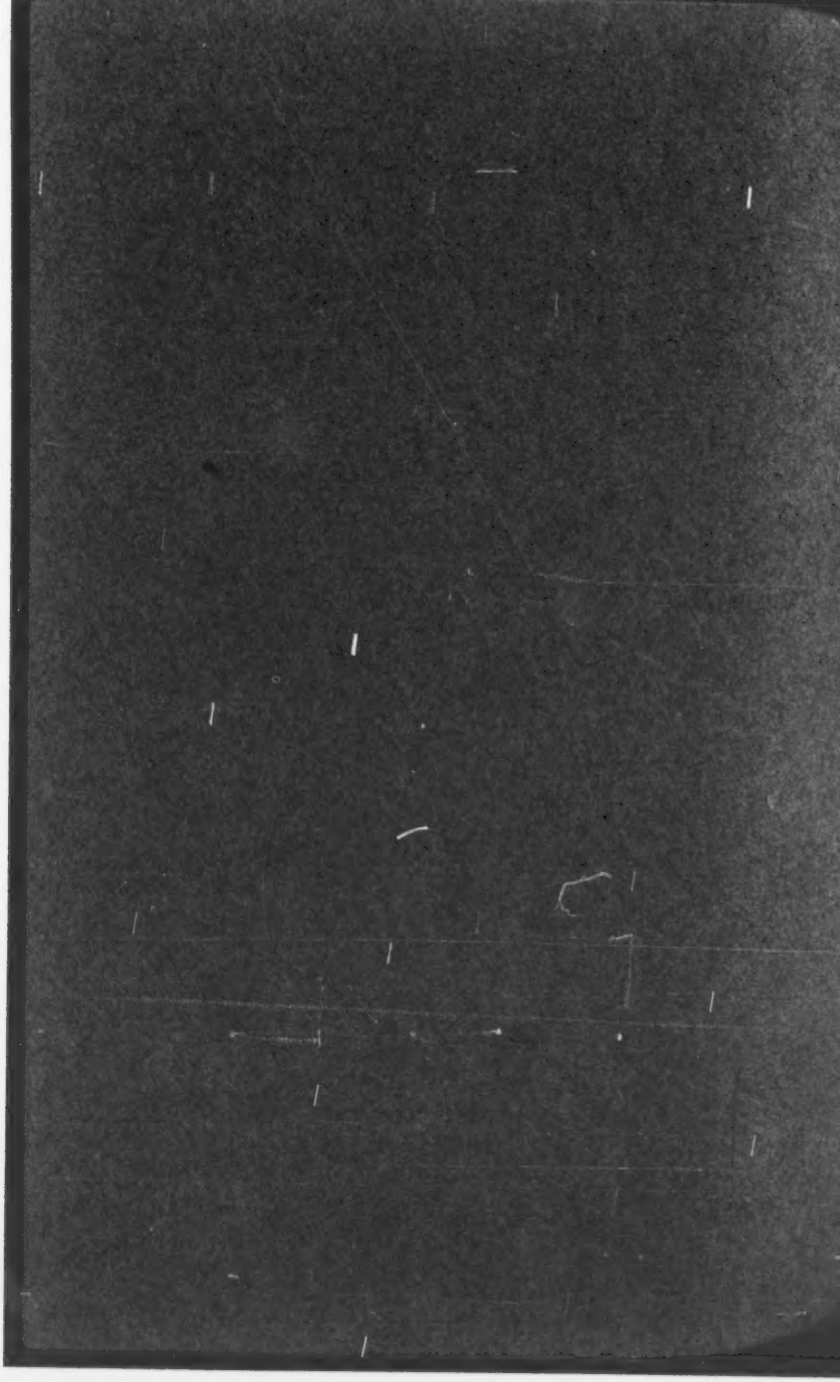
EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND S. MCKEOUGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MELLEN AND J. K. CARSON, JR., Former Members of the United States Maritime Commission,

PETITIONERS

v.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING AND PETITION FOR REHEARING OF DENIAL OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT



In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 353

EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND S. MCKEOGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MELLEN AND J. K. CARSON, JR., Former Members of the United States Maritime Commission,

PETITIONERS

v.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING

The Solicitor General, on behalf of Emory S. Land and other former members of the United States Maritime Commission, moves that this Court grant leave to file a petition for rehearing of the denial by this Court of a petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit.

The accompanying petition sets out the substantial grounds for granting the petitions for rehearing and for a writ of certiorari.